Mahlstedt, 67 App. Div. 176, 73 N. Y. Supp. 818 (aff'd, 171 N. Y. 652, 63 N. E. 1119). Whatever line of reasoning be adopted, the principal case reaches a result which seems essential in order to prevent wholesale evasions of the tax.

TRUSTS — POWERS AND OBLIGATIONS OF TRUSTEE — INVESTMENT OF TRUST FUNDS IN PARTICIPATING MORTGAGE IN TRUSTEE'S NAME. — A trust company invested the funds of several unrelated trusts in one mortgage, which it took in its own name, without any indication of the trust. Accurate accounts of the shares contributed by the various funds were kept, the security was ample, and the company could liquidate the investment of any of the funds at any time. *Held*, that the participating mortgage in the name of the trustee is improper. *In re Union Trust Co. of New York*, 149 N. Y. Supp. 324 (Surr. Ct., King's County).

The case is clearly right in holding that the investment in the trustee's own name was improper. *Corya* v. *Corya*, 119 Ind. 593, 22 N. E. 3; *In re Arguello*, 97 Cal. 196, 31 Pac. 937. The court also fully appreciated the dangers inherent in the mingling of the funds of different trusts in participating mortgages, but felt constrained by authority to uphold that feature of the investment because of its practical advantages. See *Chesterman* v. *Eyland*, 81 N. Y. 398; *Barry* v. *Lambert*, 98 N. Y. 300; *Graver's Appeal*, 50 Pa. 189. The weight of authority, however, forbids the investment of trust moneys in contributing mortgages, which deprive the trustee of control of the fund, and involve the beneficiaries' rights with those of strangers. *Webb* v. *Jonas*, 39 Ch. D. 660. It has also been held improper for a trustee to invest the funds of several unrelated trusts in a common or participating mortgage. *McCullough's Executors* v. *McCullough*, 44 N. J. Eq. 313, 14 Atl. 642. On principle, this attitude appears correct, for while the trustee retains control of the whole security, as he does not in the case of a contributing mortgage, he is nevertheless subject to conflicting duties to the several *cestuis*. There is also the constant danger of complications from the appointment of a new trustee for some of the funds, so that the system on the whole, in spite of its advantages in a given case, does not seem to merit judicial approval.

WAR — PRIZE — CAPTURE OF VESSEL TRANSFERRED TO DOMESTIC CORPORATION COMPOSED OF ALIEN ENEMIES. — Two vessels of German registry, owned by a German company, while *en route* from Hamburg to London, were sold by telegraph on August 1 to an English corporation controlled by the stockholders of the German company. On August 5, the day after the declaration of war, the vessels arrived at an English port, still flying the German flag, and were there seized as prizes. In a suit for their detention, the English corporation put in a claim that the transfer of ownership invalidated the seizure. *Held*, that the claim should be dismissed. *The Tommi* and *The Rothersand*, 59 Sol. J. 26 (Prize Court).

It is settled that all transfers of ownership *in transitu* are void when made during or in contemplation of hostilities, in order to avoid capture. *The Jan Frederick*, 5 C. Rob. 128; see *The Ann Green*, 1 Gall. (U. S.) 274, 291. See also 28 HARV. L. REV. 188, 190. Moreover, the German registry and flag are conclusive against the claimant. *The Danckebaar Afrikaan*, 1 C. Rob. 107, 113. See Declaration of London, art. 57; 28 HARV. L. REV. 217. The court further suggests that in spite of the formal transfer, the vessels might still be considered as German-owned because the English corporation was in reality substantially identical with the German company. It is possible that the intimation of the court was broader, and meant to imply that prize law might disregard the corporate fiction wherever the shareholders were alien enemies. The point, however, has never been decided, probably because the seizure has

always been justifiable on other grounds, as in the principal case. For purposes of municipal law, the corporate fiction has been respected and the vessels of an English corporation composed of alien stockholders have been held entitled to British registry. *The Queen* v. *Arnaud*, 16 L. J. Q. B. N. S. 50. Similarly it has just been held that an English corporation, composed almost entirely of alien enemies, can sue in the English courts. *Continental Tyre & Rubber Co.* v. *Thomas Tilly, Ltd.*, 138 L. T. J. 83. It is submitted that the prize court should likewise refuse to disregard the corporate fiction as to vessels owned by such a corporation. It involves no disregard of the fiction, however, to inquire who the stockholders are, and a rule of prize that vessels owned by corporations so constituted should be subject to capture, might well be adopted.

WAREHOUSEMEN — WAREHOUSE RECEIPTS — LIABILITY FOR FRAUDULENT ISSUANCE BY AGENT: EFFECT OF UNIFORM WAREHOUSE RECEIPTS ACT. — The general manager of a warehouse, who had no authority to issue receipts except upon receiving goods, issued and sold to the plaintiff warehouse receipts for goods which in fact had never been received. The plaintiff now sues the warehouseman for non-delivery of the goods. *Held*, that he cannot recover. *Rosenberg* v. *National Dock & Storage Co.*, 218 Mass. 518, 106 N. E. 171.

There has been great conflict of authority concerning the liability of warehousemen upon warehouse receipts issued by agents, without specific authority, for goods which have never been received. See WILLISTON, SALES, § 419. Previous to its adoption of the Uniform Warehouse Receipts Act, Massachusetts took the view that the warehouseman was not liable, on the ground that the agent acted outside the scope of his employment. *Sears* v. *Wingate*, 3 Allen (Mass.) 103. Section 20 of the uniform law, however, provides that "a warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods." MASS. STAT. 1907, c. 582, § 21. See MOHUN, WAREHOUSEMEN, 2 ed., p. 7. The principal case decides that this provision has made no change in the law. It seems impossible to quarrel with this conclusion, no matter what one may think of the soundness of the position previously taken. The statute was not intended to alter the several rules of agency conceived to be applicable to the case. Its words receive their full meaning as a definition of the warehouseman's liability when a receipt is issued with authority. To the purchaser of a receipt fraudulently issued by an agent the statute gives no additional protection, for he is not even a "holder of a receipt" within the meaning of § 58 of the uniform law.

WILLS — CONSTRUCTION — CONDITION FOR FORFEITURE IN CASE OF CONTEST BY LEGATEE. — A testator provided in his will that if any person named in the will should dispute its validity, his legacy should fall into the residue. A legatee unsuccessfully attempted without reasonable grounds to probate an invalid will. She now petitions for payment of the legacy. *Held*, that the legacy is forfeited. *In re Kirkholder's Estate*, 149 N. Y. Supp. 87 (Surr. Ct., Erie County).

The American authorities in regard to conditions providing for the forfeiture of the gift to a beneficiary who contests the will, tend to discard any requirement of a gift over, and to make no distinction between real and personal property. See 2 REDFIELD, WILLS,* 298; 25 HARV. L. REV. 745. But the validity of such conditions is still much in dispute. On this broader question, some jurisdictions hold that even a contest on reasonable grounds works a forfeiture. *Smithsonian Institute* v. *Meech*, 169 U. S. 398; *In re Miller's Estate*, 156 Cal. 119, 103 Pac. 842; *Moran* v. *Moran*, 144 Ia. 451, 123 N. W. 202. Others, however, will not permit a reasonable contest to forfeit the gift, because of